

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
OFFICE OF GENERAL COUNSEL

May 12, 2009

TO: BONNIE SCOTT-WALLS
Program Manager

VIA: ROBIN F. LOTANE *RL*
General Counsel

FROM: JUDSON M. CHAPMAN *JMC*
Senior Assistant General Counsel

SUBJECT: Section 316.191, "Racing on highways," and adjudications withheld
Docket No.: 2009-0000268

QUESTION PRESENTED:

Can we treat withholds of adjudication reported on spectator offenses (non-criminal) under section 316.191(3) as convictions?

CONCLUSION:

Yes.

DISCUSSION:

Section 316.191 defines "conviction" to mean, "a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld." According to 316.191(3), a person participating as a spectator at any drag race is subject to a noncriminal traffic infraction. Although section 318.14 does not authorize withholds for 316.191 violations, based on the definition quoted above, the Department should treat a withhold as a conviction even for the noncriminal, spectator portion of 316.191.

Please refer to the above docket number when submitting future inquiries regarding this matter. If you have any questions, please give me a call.

cc: Sandy Lambert
Dana Reiding

SCANNED**REQUEST FOR LEGAL ASSISTANCE,
REVIEW OR OPINION**

Date: April 13, 2009

From: Bonnie Scott-Walls

Division: DDL/BOR

Bureau: Bureau of Records

Telephone #: 850-617-2586

SunCom#: _____

Case #: _____

SUBJECT:

Racing on Highway Spectator, Section 316.191(3)(a), Florida Statutes

RECEIVED

APR 23 2009

Dept. of Highway Safety & Motor Vehicles
Office of General Counsel - Tallahassee**QUESTIONS OR NATURE OF ASSISTANCE REQUESTED:**

Can we add a guilty verdict (with 3 points) to this record if the court withholds adjudication on the Racing on the Highway- Spectator Offense? This statute specifically says in subsection (1)(a) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

PERTINENT MATERIALS OR REFERENCES ATTACHED:**RESPONSES NEEDED BY:** _____

(7 WORKDAY TURNAROUND UNLESS SPECIFIC DATE IS REQUESTED)

COMMENTS:

(ATTORNEY) _____

Select Year: 2008

Go

The 2008 Florida Statutes

Title XXIII
MOTOR VEHICLESChapter 316
STATE UNIFORM TRAFFIC CONTROL[View Entire Chapter](#)**316.191 Racing on highways.--**

(1) As used in this section, the term:

(a) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(b) "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

(c) "Racing" means the use of one or more motor vehicles in an attempt to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(d) "Spectator" means any person who is knowingly present at and views a drag race, when such presence is the result of an affirmative choice to attend or participate in the race. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the racer and the individual, evidence of gambling or betting on the outcome of the race, and any other factor that would tend to show knowing attendance or participation.

(2)(a) A person may not:

1. Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;

2. In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;

3. Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or

4. Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

Any person who violates any provision of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates any provision of this paragraph shall pay a fine of not less than \$500 and not more than \$1,000, and the department shall revoke the driver license of a person so convicted for 1 year. A hearing may be requested pursuant to s. 322.271.

(b) Any person who violates paragraph (a) within 5 years after the date of a prior violation that resulted in a conviction for a violation of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than \$500 and not more than \$1,000. The department shall also revoke the driver license of that person for 2 years. A hearing may be requested pursuant to s. 322.271.

(c) In any case charging a violation of paragraph (a), the court shall be provided a copy of the

driving record of the person charged and may obtain any records from any other source to determine if one or more prior convictions of the person for violation of paragraph (a) have occurred within 5 years prior to the charged offense.

(3)(a) A person may not be a spectator at any drag race prohibited under subsection (2).

(b) A person who violates the provisions of paragraph (a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(4) Whenever a law enforcement officer determines that a person was engaged in a drag race or race, as described in subsection (1), the officer may immediately arrest and take such person into custody. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the conditions provided in s. 316.193(6)(e), (f), (g), and (h), if the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 10 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or coowner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the department. The provisions of paragraphs (a) and (b) shall be applicable to such impoundment.

(5) Any motor vehicle used in violation of subsection (2) by any person within 5 years after the date of a prior conviction of that person for a violation under subsection (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection shall only be applicable if the owner of the motor vehicle is the person charged with violation of subsection (2).

(6) This section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

History.--s. 1, ch. 71-135; s. 1, ch. 76-31; s. 138, ch. 99-248; s. 1, ch. 2002-251; s. 1, ch. 2005-226; s. 4, ch. 2008-176.

Note.--Former s. 316.186.

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